

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based on the facts presented at the public hearing.

The December 7, 2022 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition opposing the application. A request for an automatic delay must be filed by **November 7, 2022**. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol Ave, Pierre SD 57501." If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided regarding the time, date, and location.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and may be represented by legal counsel. As a legal entity (Elk Mountain Water Users Association Inc.), the applicant, is required to be represented by legal counsel in this administrative proceeding. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Enclosed is a copy of the report, recommendation, affidavits of publication, and the petitions filed in the matter of Water Permit Application No. 2850-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. Notices, orders, other pleadings, and comments filed in this matter are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." If you intend to participate in the hearing, you are encouraged to review these documents prior to the hearing.

Contact Ron Duvall at the above Chief Engineer's address to request a copy of the staff report, recommendation, application, or other information related to the application. Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Pontious, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Pontious@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is November 7, 2022. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

Petitioner List

Water Permit Application No. 2850-2, Elk Mountain Water Users Association Inc.
October 27, 2022

PETITIONERS

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

Dalton Stearns
10321 Two Track Trl
Edgemont SD 57735

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated October 27, 2022, with attachments regarding Water Permit Application No. 2850-2 – Elk Mountain Water Users Association Inc., was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on October 27, 2022.

Susan Anderson
Elk Mountain Water Users Assn. Inc.
PO Box 6062
Custer SD 57730

Petitioners as follows:

Daniel Norman Stearns
25499 Dewey Rd
Edgemont SD 57735

William and Susan Paulton
10666 Pass Creek Rd
Edgemont SD 57735

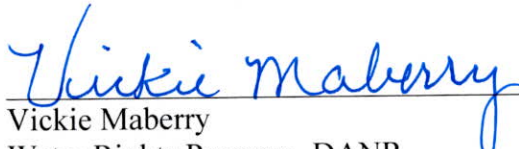
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Jim and Charel Pitts
25385 Gillette Canyon Rd
Newcastle WY 82701

Travis Paulton
10693 Pass Creek Rd
Edgemont SD 57735

Above also Sent Inter-office to:


Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 27th day of October, 2022.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025

